

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Workers' Compensation**

**INITIAL STATEMENT OF REASONS**

**Subject Matter of Proposed Regulation: Workers' Compensation – Medical and Medical-Legal Initial Lien Filing Fees**

The Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in the Court Administrator (as that office is currently vacant pending an appointment by the Governor) and acting pursuant to the authority vested in the Court Administrator by Labor Code Section 4903.05 has adopted a regulation on an emergency basis to implement the provisions of Labor Code Section 4903.05. The provisions of Labor Code Section 4903.05 took effect on January 1, 2004.

The regulation adopted is Subchapter 1.9 of Chapter 4.5 of Title 8 of the California Code of Regulations, Section 10250. The regulation sets forth the process and manner under which the Court Administrator will collect the \$100 dollar initial lien filing fee required of medical providers and medical-legal lien claimants.

The emergency regulation became effective on January 1, 2004 and will remain in effect for a period of 120 days from January 1, 2004. The purpose of this rulemaking is to adopt the emergency regulation on a permanent basis.

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

**Date: Thursday March 11, 2004**

**Time: 10:00 a.m.**

**Place: Auditorium**

**The Governor Hiram Johnson State Office Building**

**455 Golden Gate Avenue**

**San Francisco, California 94102**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

**BACKGROUND TO REGULATORY PROCEEDING:**

Labor Code Section 4903.05 requires medical providers and medical lien claimants who use the

judicial services of the Workers' Compensation Appeals Board to contribute to the funding of the workers' compensation program through the payment of a \$100 filing fee for each initial medical or medical-legal lien filed in a workers' compensation case.

The proposed regulation sets forth the manner and procedure for collecting the medical provider and medical legal lien claimant initial lien filing fees required by Labor Code Section 4903.05.

**Section Adopted: Section 10250 – Payment of Medical Provider and Medical-Legal Lien Claimant Initial Lien Filing Fees:**

**Specific Purpose of Adoption:**

Labor Code Section 4903.05 requires medical providers and medical lien claimants who use the judicial services of the Workers' Compensation Appeals Board to contribute to the funding of the workers' compensation program through the payment of a \$100 filing fee for each initial medical or medical-legal lien filed in a workers' compensation case.

The proposed regulation sets forth the manner and procedure for the collection of the medical provider and medical legal lien claimant initial lien filing fees required by Labor Code Section 4903.05 to support California's workers' compensation system.

The regulation sets forth the procedures for payment of the filing fee where the lien is being filed either in writing or an electronic format or where the lien is being filed in a case where there is no application yet on file.

The regulation provides that when a medical provider or medical-legal lien claimant files a single initial lien in more than one related case involving the same employee or dependent, only a single filing fee shall be required.

The regulation provides that a case shall be deemed related if the case alleges injury to the same or substantially same body parts.

The regulation also provides that the term "lien claimant" does not include an interpreter or a copy service.

The regulation informs the regulated public that no initial lien, filed in writing, shall be accepted for filing on or after the effective date of the regulation unless accompanied by full payment for the filing fee required by Labor Code Section 4903.05, and that any initial lien delivered for filing on or after January 1, 2004 (the effective date of the emergency regulation<sup>1</sup>) without payment of the initial lien filing fee shall be discarded without notice to the party submitting it, unless a postage paid, pre-addressed return envelope is submitted with the lien.

The regulation informs the regulated public that the Workers' Compensation Appeals Board will

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<sup>1</sup> For purposes of clarity, each reference in the emergency regulation to "the effective date of these regulations" is being changed to the actual effective date of the regulation, January 1, 2004.

not order or enforce payment of any medical treatment or medical-legal lien filed on or after January 1, 2004 without prior payment of the filing fee required by Labor Code Section 4903.05.

The regulation also informs the regulated public that where the attorney for the employee or dependent or any assignee of the lien claimant files the initial medical or medical-legal lien, that filing shall be deemed to have been made by an agent for the medical provider or medical-legal lien claimant and payment of the filing fee required by Labor Code Section 4903.05 shall be required of the filing party as if the lien had been filed directly by the medical provider or medical-legal lien claimant.

Finally, a non-substantive change without regulatory effect is being made to correct a typographical error in the emergency regulation. An incorrect Zip Code was given for electronic format lien filers to mail their payments to.

#### **Factual Basis That Adoption is Necessary:**

Adoption of an implementing regulation is a statutory mandate. Labor Code Section 4903.05 provides in Subdivision (d) that “The court administrator shall adopt reasonable rules and regulations governing the procedures for the collection of the filing fee.”

Liens may be filed in workers’ compensation cases in either a written or an electronic form. It is also possible for a lien claimant to file a lien in a case where no other party has yet filed an application for adjudication of claim. A lien claimant may also file liens in a number of related and/or unrelated cases at the same time, have its liens filed by an intermediary (such as a billing service) or to assign its liens to a third party for collection. It is necessary to provide the regulated public with guidance for how the initial lien filing fee is to be paid in each of these different situations.

#### **TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

The Division did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the above-identified regulation.

#### **SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

The proposed regulation does not mandate the use of specific technologies or equipment.

#### **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATION AND REASONS FOR REJECTING THOSE ALTERNATIVES**

The Administrative Director has not identified any effective alternative, or any equally effective and less burdensome alternative to the regulation at this time. The public is invited to submit such alternatives during the public comment process.

#### **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION**

## **THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Administrative Director has determined that the proposed regulation may affect small businesses. In order to lessen the adverse impact of the regulation on small businesses, the regulation exempts interpreters and copy services from the fee requirement. The Administrative Director has determined that in many cases the imposition of a \$100 filing fee would be grossly disproportionate to the total amount of the lien being filed (often under \$50). Many interpreters and some copy services are either small businesses or sole proprietors.

The Administrative Director invites the public during the public comment periods for this rulemaking to submit information on possible adverse impacts on small businesses, and to propose alternatives that would lessen any adverse impact on small business.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The requirement to pay the filing fee is a statutory mandate. The regulation only provides the procedures to be used for the collection of the fee.

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